STATE OF MICHIGAN

COURT OF APPEALS

SALEEM AHMED,

Plaintiff-Appellant,

v

VISTEON AUTOMOTIVE SYSTEMS,

Defendant-Appellee,

and

FORD MOTOR COMPANY,

Defendant.

UNPUBLISHED
November 16, 2004

No. 248411
Wayne Circuit Court
LC No. 00-034090-CL

Before: Zahra, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant Ford Motor Company's motion for summary disposition. We affirm.

I. Facts and Procedure

Plaintiff was born in 1945 and is of Pakistani descent. On July 18, 1994, plaintiff was hired as a Manufacturing Engineer at the Ford Plastics Plant (which was renamed Visteon Automotive Systems, a subsidiary of Ford, approximately two years later[1]) in Milan, Michigan. During his employment at the Milan plant, plaintiff filed numerous informal complaints with plant management detailing allegedly demeaning and discriminatory actions directed at plaintiff by his immediate supervisor, Daniel Krumm. In February 1998, Visteon hired plaintiff as a Design Engineer and transferred him to a facility in Allen Park, Michigan. Before leaving the Milan plant, plaintiff filed a formal complaint with the Milan facility's Plant Manager, David

[1] Throughout plaintiff's employment, Visteon remained a subsidiary of Ford. Visteon did not become an independent corporation until after plaintiff's employment was terminated in June 2000.

Scroggie, detailing Krumm's discriminatory treatment of plaintiff. In this complaint, plaintiff alleged that Krumm unfairly assigned tasks and attempted to keep plaintiff from meaningful duties in order to affect plaintiff's performance rating. Plaintiff further claimed that Krumm tried to find fault with plaintiff's work and unjustifiably accused plaintiff of poor performance and poor relational skills.

While working at the Allen Park facility, plaintiff held several positions, including the Supplier Technical Assistant Engineer in charge of ensuring that Ford received quality parts from suppliers, including Key Plastics. While dealing with Key Plastics, plaintiff met with Key Plastics's Plant Manager, Charlie LaRose, and told LaRose that he owned a company, The Society of Professional Advancement, Inc., where he used to teach seminars to help improve product quality. In January 2000, John Martin, the Director of Engineering for Key Plastics, called plaintiff to set up a meeting to discuss the possibility of having plaintiff, through The Society of Professional Advancement, Inc., teach seminars at Key Plastics. At the meeting between the two men, plaintiff gave Martin his business card from The Society of Professional Advancement and a package of materials, including a seminar preview book and three presentation preview tapes. The information plaintiff gave to Martin indicated that the seminars ranged in price from $495 to $745 per employee, with a minimum of twenty employees per seminar, and that the total cost would be between $10,000 and $15,000. However, because plaintiff understood that he would have a conflict of interests if he did business with a Ford supplier, plaintiff told Martin that he would not teach seminars independently for Key Plastics unless he had permission from Ford or Visteon to do so.

On February 22, 2000, an anonymous caller notified the Ford Security Department that plaintiff had approached Martin and asked Martin to hire him through The Society of Professional Advancement to act as a quality consultant for Key Plastics. Believing this to be a potential violation of the Ford employee conflict of interests policy, Ford investigators interviewed Martin. Martin confirmed to the investigators that plaintiff had approached him about retaining plaintiff to conduct quality seminars at Key Plastics. Martin stated that LaRose set up a meeting between plaintiff and Martin. At the meeting, plaintiff gave Martin materials regarding the seminars and aggressively attempted to convince Martin to retain plaintiff. Martin told Ford investigators that while plaintiff did not directly threaten Key Plastics with termination of its business relationship with Ford, plaintiff implied to him that any difficulties between Key Plastics and Ford could be alleviated if Key Plastics retained plaintiff to provide the seminars. Martin stated that plaintiff created difficulties with respect to Key Plastic's supplier relationship with Ford.

After an interview with plaintiff, the Ford investigators decided to believe Martin's version of the incident, and concluded that plaintiff's conduct was a serious breach of integrity. The findings of the Ford investigators were forwarded to Patrick Quinn, the Ford Human Resource Manager, who determined that plaintiff's conduct was a breach of Ford's conflict of interest policy. On June 2, 2000, Quinn recommended to Tim Pomaville, the Visteon Human Resource Manager, that plaintiff's employment be terminated. On June 5, 2000, Pomaville terminated plaintiff's employment. Plaintiff was informed that he was being dismissed for a violation of Ford's Policy C-3, which provided, in pertinent part:

> This is to remind employees of obligations identified in the Policy Letter No. 3 and the no solicitation/no distribution rule. No person may solicit or offer

> items for sale on Company property for any purpose, without approval. . . . Examples of inappropriate solicitation include: notification of sales for commercial businesses[,] product brochures or catalogues[, and] travel packages.

Plaintiff filed suit against defendants, alleging age discrimination, ethnic discrimination, racial discrimination and creation of a hostile work environment, disparate treatment, and retaliation in violation of the Elliot-Larsen Civil Rights Act (CRA), MCL 37.2101 *et seq.* Specifically, plaintiff alleged that he was not afforded pertinent training, precluded from meaningful tasks, removed arbitrarily from assigned tasks, given improper performance reviews, and constantly reprimanded, harassed, and ridiculed by Krumm. Plaintiff alleged that Krumm made references to plaintiff's age, ethnicity, and race in the presence of other employees, customers, and contracting personnel, including making the following statements: (1) "I do not need a man of your education and age, but need someone younger"; (2) "I don't know why we hired you at your age"; (3) "that God damm [sic] Saleem"; (4) "being from Asia does not excite me"; and (5) "I do not care for Asians." Plaintiff alleged that he continually complained of demeaning and harassing treatment to management, who neglected or refused to investigate plaintiff's complaints. Plaintiff contended that his termination was pretextual and was in retaliation for his complaints of discriminatory treatment.

Ford filed a motion for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10),[2] arguing that plaintiff failed to demonstrate a legal or factual basis for his claims. The trial court granted Ford's motion without explanation.

II. Analysis

A. Standard of Review

We review de novo a trial court's decision regarding a motion for summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). The trial court did not specify under which subrule it granted Ford's motion for summary disposition, but the court considered facts outside the pleadings at the oral argument. Thus, we will not treat Ford's motion as having been granted under MCR 2.116(C)(8). MCR 2.116(G)(5); *Velmer v Baraga Area Schools*, 430 Mich 385, 389; 424 NW2d 770 (1988); *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 539; 683 NW2d 200 (2004). Further, in granting Ford's motion, there is no indication that the court determined the plaintiff's claims were barred under MCR 2.116(C)(7). Therefore, we treat Ford's motion as having been granted under MCR 2.116(C)(10).

> A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Veenstra, supra* at 163. The trial court must consider affidavits, pleadings, depositions, admissions, and any other evidence

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[2] Although Ford's brief in support of its motion for summary disposition does not specify under which subsection of MCR 2.116(C) it was bringing its motion, the trial court's order granting Ford's motion indicated that the motion was pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10).

> submitted by the parties in a light most favorable to the nonmoving party. *Id.* at 164. Summary disposition should be granted if there is no genuine issue of any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10), (G)(4); *Veenstra, supra* at 164. [*Kraft, supra* at 539-540.]

B. Plaintiff's CRA Discrimination Claims

Plaintiff claims that the trial court improperly granted Ford's motion for summary disposition because plaintiff presented sufficient evidence to demonstrate the existence of a genuine issue of material fact regarding his claims of discrimination based on his age, ethnicity, and race. MCL 37.2202(1)(a) provides:

> (1) An employer shall not do any of the following:
>
> > (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status.

When a plaintiff is able to present direct evidence of discrimination in violation of the CRA, the plaintiff "can go forward and prove unlawful discrimination in the same manner as a plaintiff would prove any other civil case." *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001).[3] Because plaintiff does not argue that he presented direct evidence of impermissible bias, he must present a prima facie case by proceeding through the steps set forth in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). *Hazle, surpa* at 462. Under *McDonnell Douglas*, the plaintiff may present a prima facie case on the basis of proofs from which a factfinder could infer that the plaintiff was the victim of unlawful discrimination. *Hazle, supra* at 462. To establish a prima facie case of discrimination, the plaintiff must present evidence that (1) he belongs to a protected class, (2) he suffered an adverse employment action, (3) he was qualified for the position, and (4) he was treated less favorably than a similarly situated individual outside his protected class. *Id.* at 463. Once the plaintiff establishes a prima facie case of discrimination, causation is presumed, and a presumption of discrimination arises. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 135; 666 NW2d 186 (2003); *Hazle, supra* at 463. The employer may rebut this presumption of discrimination by producing evidence that it had a legitimate, nondiscriminatory reason for its employment decision. *Id.* at 464. The plaintiff must then demonstrate that the employer's stated nondiscriminatory reason for its employment decision was a pretext for unlawful discrimination.

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[3] "Direct evidence" has been defined as "'evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions.'" *Id.*, quoting *Jacklyn v Schering-Plough Healthcare Products Sales Corp*, 176 F3d 921, 926 (CA 6, 1999). "Under the direct evidence test, a plaintiff must present direct proof that the discriminatory animus was causally related to the adverse employment decision." *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 135; 666 NW2d 186 (2003).

Id. at 465-466. "A plaintiff can establish that a defendant's articulated legitimate, nondiscriminatory reasons are pretexts (1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision." *Feick v Monroe County*, 229 Mich App 335, 343; 582 NW2d 207 (1998). In regard to a motion for summary disposition, the ultimate question is whether the plaintiff established a question of material fact upon which reasonable minds could differ regarding whether discrimination was a motivating factor, i.e., made a difference, in the employer's decision. *Hazle, supra* at 466.

1. Discrimination Before Plaintiff's Termination

In regard to plaintiff's discrimination claims relating to events occurring before his termination, plaintiff argues that Krumm demeaned him about his age, race, and ethnicity to such an extent that he was prevented from obtaining training necessary for his position. Plaintiff argues that Krumm had plaintiff perform menial tasks, gave him unjustified negative performance reviews that delayed his promotions, and intentionally blocked his opportunity to be selected for three different positions within the company.

The parties do not dispute that plaintiff was a member of a protected class, as he was born in 1945 and is of Pakistani descent. However, we conclude, under the *McDonnell Douglas* test, that plaintiff has not provided any evidence that he suffered an adverse employment action before his discharge. To establish an adverse employment action, the plaintiff must show that there is some objective basis for demonstrating that the change is materially adverse. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 364; 597 NW2d 250 (1999). A materially adverse employment action may include "'"termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation."'" *Id.* at 363, quoting *Kocsis v Multi-Care Mgt, Inc*, 97 F3d 876, 885-886 (CA 6, 1996), quoting *Crady v Liberty Nat'l Bank & Trust Co*, 993 F2d 132, 136 (CA 7, 1993). An employment action is not materially adverse if it is a mere inconvenience or alteration of job responsibilities. *Wilcoxon, supra* at 364.

After approximately two years of working at the Milan plant, plaintiff was approved for a salary increase when his pay scale was upgraded from grade six to grade seven. Plaintiff interviewed for four different positions within Visteon while he worked at the Milan plant and was turned down for three of the positions. However, plaintiff could not show that Visteon's decision not to hire him for the first three positions was an adverse employment action, because he did not know the compensation or benefits given to people who were hired for these positions. Plaintiff was hired for the fourth position, which resulted in his transfer to the Allen Park facility. With this position, plaintiff's pay scale was initially grade seven, but was later improved to grade eight. There is no evidence that plaintiff lost compensation or benefits because of a negative evaluation or criticism of his job performance by Krumm. Although plaintiff stated that Krumm assigned him to "menial jobs," he did not specify what his proper job responsibilities were, the nature of the "menial jobs" that he was assigned to perform, or why an employee in his position should not be expected to perform these tasks. Other than advancing his own subjective views on the subject, plaintiff has failed to show that his performance of these tasks was an adverse employment action. See *Wilcoxon, supra* at 365.

Further, defendant has not shown that he was treated less favorably than a similarly situated individual outside his protected class. Plaintiff stated that he was told that he had not been hired for the first three positions because they had been filled. Plaintiff admitted that he could not identify anyone who was hired for the positions that he sought. In particular, plaintiff did not know the qualifications or experience of any of the selected candidates and could not demonstrate that a young or non-Pakistani person was hired in his stead. Therefore, plaintiff failed to establish a prima facie case of discrimination.

Ultimately, plaintiff failed to create a question of material fact regarding whether discrimination made a difference in defendants' employment decisions before plaintiff was terminated. Plaintiff did not know if Krumm blocked his selection for any of the positions he sought or was even involved in the decision-making process. Plaintiff offered no evidence that age, race, or ethnicity was considered when the job selection was made for the positions to which he applied.

2. Discrimination in Plaintiff's Termination

In regard to plaintiff's discrimination claims relating to his termination, plaintiff argues that the conflict of interest allegations against him were never substantiated and were pretexts for terminating him. The parties do not dispute that plaintiff was qualified for the position and suffered an adverse employment action by being terminated from the position. However, we conclude that plaintiff failed to establish a prima facie case of discrimination because there is no evidence that he was treated less favorably than a similarly situated person outside his protected class. *Hazle, supra* at 463. Plaintiff failed to offer evidence that Ford treated the anonymous phone call and subsequent investigation of plaintiff differently than its standard procedure. In particular, plaintiff failed to show that any young or non-Pakistani employee who engaged in similar conduct was not likewise investigated and terminated. Plaintiff also failed to show that he was replaced by a young or non-Pakistani person after his termination.

Further, plaintiff has not shown that Visteon's decision to terminate him was a pretext for discrimination. Plaintiff asserts that Visteon's reason for termination was based on an unsubstantiated claim because an investigation report indicates that LaRose stated that he did not remember meeting with plaintiff. Yet plaintiff admits in his deposition that he met with both LaRose and Martin and discussed the topic of plaintiff teaching quality seminars. Further, there is evidence that Martin twice gave Ford investigators details of his meeting with plaintiff and recalled that plaintiff aggressively solicited him by giving him materials and information on plaintiff's seminars for improving quality. Plaintiff contends that the anonymous caller to Ford's Security Department was fabricated, and that Martin was lying to Ford investigators concerning the discussions between Martin and plaintiff regarding plaintiff teaching seminars. However, regardless of who was being truthful regarding these issues, plaintiff admitted in his deposition that he met with Martin and provided him information about his company and the seminars he taught, including providing a business card, price information, and seminar preview materials. From this information, investigators could have reasonably concluded that plaintiff had violated Ford Policy C-3 by soliciting a Ford supplier. Regardless, in determining whether the employer had a legitimate, nondiscriminatory reason for its employment decision, the focus is not on the "soundness" of the employer's business judgment, but on whether the decision was lawful, meaning it was not motivated by discriminatory intent. *Hazle, supra* at 464 n 7. Pomaville relied on his business judgment in deciding to trust the findings of Quinn and the Ford

investigators and in deciding to terminate plaintiff. Pomaville's decision was a legitimate, nondiscriminatory reason for terminating plaintiff.

Plaintiff did not present any evidence that Ford's reason for terminating him was a pretext for unlawful discrimination. Although plaintiff presented evidence of a formal complaint against Krumm and of his relentless pursuit of remedial action concerning his treatment, there is evidence that those involved in the investigation and the decision to terminate his employment had no knowledge of plaintiff's ongoing complaints of discrimination. Plaintiff has not presented any evidence that he was terminated because of his age, ethnicity, or race. Instead, plaintiff relies on mere speculation to support his claims that he was terminated on account of his age, ethnicity, or race. "Mere speculation or conjecture is insufficient to establish reasonable inferences of causation." *Sniecinski, supra* at 140. Because there exists no question of material fast regarding whether discrimination was a motivating factor in Visteon's decision to terminate plaintiff, the trial court properly granted Ford's motion for summary disposition in this regard.

C. Plaintiff's CRA Retaliation Claim

Plaintiff also argues that a genuine issue of material fact exists regarding whether his employment was terminated in retaliation for filing and rigorously pursuing complaints against Krumm. We disagree. MCL 37.2701 prohibits an employer from "retaliating against an employee for making a charge, filing a complaint, testifying, assisting, or participating in an investigation, proceeding, or hearing under the act." *Feick, supra* at 344.[4] To establish a prima facie claim of retaliation, the plaintiff must establish the following:

> "(1) that the plaintiff engaged in a protected activity, (2) that this was known by the defendant, (3) that the defendant took an employment action adverse to the plaintiff, and (4) that there was a causal connection between the protected activity and the adverse employment action." [*Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001), quoting *Meyer v Center Line*, 242 Mich App 560, 568-569; 619 NW2d 182 (2000).]

To establish causation, the plaintiff must show that his participation in the protected activity was a "significant factor" in the employer's adverse employment action, not just that there was a causal link between the two. *Barrett, supra* at 315.

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[4] MCL 37.2701 provides, in pertinent part:

> Two or more persons shall not conspire to, or a person shall not: (a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

We conclude that plaintiff failed to demonstrate that his filing of complaints against Krumm was a significant factor in Visteon's decision to terminate his employment. As explained, *supra*, there is evidence that neither the Ford investigators nor the people responsible for making the decision to terminate plaintiff's employment had knowledge of plaintiff's complaints against Krumm. Although plaintiff asserts that the allegations made by Martin and the anonymous caller are false and unsubstantiated, plaintiff's disagreement with the investigative process and business decision to terminate him did not establish that Visteon's reason to discharge him was based on discriminatory animus or was in retaliation for plaintiff's pursuit of a work-related complaint. See *Hazle*, *supra* at 476, quoting *Town v Michigan Bell Telephone Co*, 455 Mich 688, 704; 568 NW2d 64 (1997) ("'[T]he plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent'"). Therefore, we conclude that the trial court properly dismissed plaintiff's retaliation claim, because plaintiff failed to offer evidence to establish a material factual issue concerning whether Visteon's reason for discharging him was in any way connected to plaintiff's filing and pursuing complaints against Krumm.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Michael J. Talbot